IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 26473 of 2007(B)

OS.234/2005 of MUNSIFF COURT, VADAKARA

.....

PETITIONER:

MARUTHERI KUTTIYIL AYSHU,
D/O.YUSAF HAJI, AGED 56,
ERAMALA AMSOM DESOM,
P.O.ORKKATTERI, VADAKARA TALUK.

BY ADV. SRI.PULIKOOL ABOOBACKER
SRI.ZUBAIR PULIKKOOL

RESPONDENTS:

---

1. SAKKENA, D/O.OF AYSHU, AGED 28,
HOUSE WIFE MARUTHERIKKUNI HOUSE,
ERAMALAAMSOM, ORKKATTERI DESOM.

2. SUDHARMAN, S/O.KANNAN, 48 YEARS,
PUTHURU HOUSE, PUTHURU P.O., VADAKARA.

BY ADVS.
SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C0 26473/07

Appendix

Petitioner's Exts:

Ext.P1 Photostat copy of the Gift Deed.

Ext.P2 Photostat copy of the building tax receipt.

Ext.P2(a) Photostat copy of the building tax receipt.

Ext.P2(b) Photostat copy of the building tax receipt.

Ext.P2(c) Photostat copy of the building tax receipt.

Ext.P3 Photostat copy of assessment register.

Ext.P4 Photostat copy of the order of the injunction petition in IA 2299/05 in OS 234/05.

Ext.P5 Photostat copy of the order in IA 615/2006 in OS 234/05.

Ext.P6 Photostat copy of Rent Control Petition as R.C.P. 30/06.

Ext.P7 Photostat copy of the order dated 11.11.2006 in IA 1265/06 in RCP 30/06

Ext.P8 Photostat copy of the plaint as OS 9/2007.

Ext.P9 Photostat copy of the written statement filed by the first respondent before the Munsiff Court, Vatakara.

Ext.P10 Photostat copy of the order in IA 679/07 in OS 234/05

M.N.Krishnan, J.

==========

W.P(C).No.26473 of 2007

==========

Dated this the 28th day of November, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Munsiff, Vadakara in I.A.No.615 of 2006 in O.S.No.234 of 2005. It was an application filed by the petitioner therein to implead her as the second defendant in the suit. The suit is one for injunction whereby the plaintiff in the suit wants to restrain the defendants who are tenants of the property not to make any alteration of the physical features of the property. The person who wants to get her implead as a party is none other than the mother of the plaintiff. The plaintiff is claiming right on the strength of a gift deed executed by her mother in her favour and it is admitted by both sides that a suit for cancellation of the document is pending consideration before the court.

2. Whatever it may be, the plaintiff claims or asserts over right in the property only on the basis of a gift deed and the person, who had executed the gift deed is challenging the same and she wants to get her impleaded as a party. Under ordinary circumstances in a suit for injunction where the plaintiff can succeed on the basis of her possession, impleading need not be allowed. But in a case where the whole decision depends upon

the fact whether the plaintiff is the owner of the property or not and when there is such a dispute and the person who executed the document comes forward before the court challenging the same, I feel that for a real resolution of the controversy between the parties it is necessary to have her as a party.

3. Therefore, I set aside the order of the court below and allow the impleading application and direct the court below to take steps for amendment of the plaint and cause title. I make it clear that the defendants may be permitted to file their written statement and in the light of the impleadment, the plaintiff be permitted to file a replication adding particulars in the plaint and if she wants to amend the plaint incorporating certain matters, which will be inter se dispute between the plaintiff and the second defendant, that also may be permitted.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 28/11